



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

COPY MAILED

AUG 30 2007

OFFICE OF PETITIONS

In re Patent No. 7,175,988 :
Issued: 13 February, 2007 :
Application No. 10/067,800 : DECISION ON APPLICATION
Filed: 8 February, 2002 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. :
1488.115000I :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. §1.705(d)" filed on 12 April, 2007. In effect, patentees request that the determination of patent term extension of five hundred thirty eight (538) days in this application be corrected to a determination of patent term adjustment of six hundred (600) days.

The petition is **GRANTED** to the extent indicated.

Patentees are given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136.

On 13 February, 2007, the above-identified application matured into U.S. Patent No. 7,175,988. The instant request for reconsideration filed on 12 April, 2007, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 538 days.

Applicants state that the patent is not subject to a terminal disclaimer.

Applicants dispute the reduction of 120 days for the filing of the Supplemental Information Disclosure Statement after the mailing of the Notice of Allowance and the reduction of 62 days for the filing of the supplemental paper filed on 14 December, 2006.

A review of the application file reveals that applicants filed a Supplemental Information Disclosure Statement (IDS) on 1 February, 2006, after the mailing of the Notice of Allowance on 12 January, 2006. The IDS did not contain a proper 37 C.F.R. § 1.704(d) statement. The IDS contained a statement that "Each item contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 C.F.R. §1.56(c) more than thirty days prior to the filing of **this** information disclosure statement." § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was first cited in **any** communication from a foreign patent office in a counterpart application and that this communication was not received by any individual more than thirty days prior to the filing of **the** information disclosure statement."

Applicants should have mirrored the language as required by § 1.704(d). Accordingly, applicant delay of one hundred twenty (120) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(8).

If applicants want to make the proper assertion, then applicants may file a Request for Reconsideration of this patent term adjustment decision, with a statement mirroring the language of § 1.704(d). Patentees are given **two (2) months** to respond to this decision. No additional fee is required. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

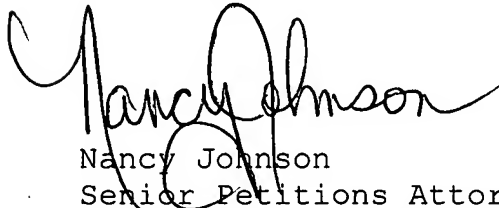
With regard to the reduction of sixty-two (62) days of patent term adjustment, this reduction was based on the filing of the Interview Summary which was filed on 12 April, 2006. Such a paper is not identified as one of the papers the filing of which the Director has specifically deemed not be a "failure to engage

in reasonable efforts" within the meaning of 37 CFR 1.704(c)(10). Nonetheless, under the circumstances of this case, it is concluded that the filing of applicants' Interview Summary is not a failure to engage within the meaning of 37 CFR 1.704(c)(10). Thus, it is concluded that the reduction of sixty-two (62) days is not warranted.

In view thereof, the patent term adjustment indicated on the patent should be six hundred (600) days.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by SIX HUNDRED (600) days.

Telephone inquiries with regard to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272 - 3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,175,988 B2
DATED : February 13, 2007
INVENTOR(S) : Viktor Roschke

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (538) days

Delete the phrase "by 538 days" and insert -- by 600 days--